# Abortion Reporting Act

*Model Legislation & Policy Guide*

Americans United for Life

*Advancing the Human Right to Life in Culture, Law, and Policy*

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# INTRODUCTION

In today's culture, abortion has been marketed to women as a "cure all" solution to unintended pregnancies. Masked by inaccurate and incomplete data on abortion's safety and efficacy, the true dangers of abortion remain underreported, and all too often ignored. How many women have died from botched abortions? How many women continue to suffer in silence from long-term abortion complications? How many abortions are even performed in the United States each year? We simply do not know.

The Charlotte Lozier Institute (CLI) summarized the problem in a recent report: "Although accurate abortion data is vital for multiple public health and public policy purposes, U.S. abortion reporting remains dilatory and incomplete. States set their own reporting standards, and three states collect no abortion data at all, while others collect only limited data. States voluntarily share their data with the U.S. Centers for Disease Control and Prevention (CDC) for inclusion in annual abortion surveillance reports, generally published two years after the data collection. Since not all states report abortions, and data quality varies from state to state, CDC abortion totals are well below—by 30 percent or more—independent estimates from the pro-abortion Guttmacher Institute."[1]

CLI undertook a review of state abortion reporting laws, examining statutes and published reports, and talking with state officials about their practices regarding gathering and publishing information.[2] CLI's review involved creating a comprehensive list of report elements, determining the time horizon between the gathering of data and the production of annual reports, and assessing the ease with which information about abortion can be gleaned from state governments, including public web sites. This comprehensive examination showed what many in the pro-life movement already recognized: because of the deficient abortion reporting system, American abortion data is inaccurate and often misleading. A significant number of abortions go unreported, and the deaths of and injuries to countless women who have had abortions are effectively swept under the rug. As the author of a leading abortion textbook—who is one of the only doctors doing late-term abortions in the United States—acknowledges, "[T]here are few surgical procedures given so little attention and so underrated in its potential hazard as abortion."[3]

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[1] Tessa Longbons, *U.S. Abortion Trends: 2019 and Preliminary 2020,* Charlotte Lozier Institute (Sept. 2021) https://s27589.pcdn.co/wp-content/uploads/2021/09/American-Report-Series_19.pdf.
[2] Charles A. Donovan & Rebecca Gonzales, *Abortion Reporting: Toward a Better National Standard,* Charlotte Lozier Institute (Aug. 2016) https://lozierinstitute.org/wp-content/uploads/2016/08/Abortion-Reporting-Toward-a-Better-National-Standard-FINAL.pdf.
[3] Warren M. Hern, ABORTION PRACTICE 101 (1990).

It's frightening that, after nearly fifty years and although abortion has become one of the most common medical procedures performed, it remains a procedure that we know so little about. The reality of abortion and its impact on women remain shrouded in mystery; yet abortion advocates demand unfettered access to the procedure and crassly promote abortion as a "life-saving" and "health promoting" solution with negligible risks. 46 states and the District of Columbia currently have a law addressing abortion reporting, yet there is still an estimated 33% undercount in the CDC state reports as compared to a pro-choice organization report, if counted at all.[4]

To safeguard maternal health, complete and reliable data on abortion must be available to women, the medical community, and the public.[5] A comprehensive state reporting system—one that specifically emphasizes reporting on complications—is the only way to accomplish this goal. AUL's *Abortion Reporting Act* provides such a system, and our updated bill includes new data points based on the CLI report that will allow us to better track the incidence of chemical abortion and related complications. Only when such a system is in place will we finally be able to unmask the reality of abortion in America.

For more information on AUL's *Abortion Reporting Act*, or for drafting assistance, please contact AUL's Legislative Team at Legislation@aul.org.

[4] Joerge Dreweke, *Abortion Reporting: Promoting Public Health: Not Politics*, (June 18, 2015), https://www.guttmacher.org/gpr/2015/06/abortion-reporting-promoting-public-health-not-politics (last accessed June 14, 2022).
[5] *See generally*, Jack C. Smith & Willard Cates, Jr., *The Public Need for Abortion Statistics*, Public Health Reports, Vol. 93, 194–197.

# ABORTION REPORTING ACT

HOUSE/SENATE BILL No. _____
By Representatives/Senators _____

Section 1. Title.

This Act may be known and cited as the "Abortion Reporting Act."

Section 2. Legislative Findings and Purposes.

(a) The [*Legislature*] of the State of [*Insert name of State*] finds that:

(1) The State "has legitimate interests from the outset of pregnancy in protecting the health of women." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 847 (1992).

(2) Specifically, the State "has a legitimate concern with the health of women who undergo abortions." *Akron v. Akron Ctr. for Reproductive Health, Inc.* 462 U.S. 416, 428–29 (1983).

(3) Abortion is achieved by a) an invasive, surgical procedure that can cause severe physical and psychological (both short- and long-term) complications for women, including but not limited to: uterine perforation, cervical laceration, infection, bleeding, vaginal bleeding that qualifies as a Grade 2 or higher adverse event according to the Common Terminology Criteria for Adverse Events (CTCAE), pulmonary embolism, deep vein thrombosis, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, shock, amniotic fluid embolism, coma, placenta previa in subsequent pregnancies, preterm delivery in subsequent pregnancies, free fluid in the abdomen, allergic reaction to anesthesia or abortion-inducing drugs, an increased risk for developing breast cancer, psychological or emotional complications such as depression, suicidal ideation, anxiety, sleeping disorders, and death; or b) administration of a drug regimen that can cause many of the same complications, and normal bleeding or spotting for up to 14 days after the abortion.

(4) To facilitate reliable scientific studies and research on the safety and efficacy of abortion, it is essential that the medical and public health

communities have access to accurate information both on abortion procedures and on complications resulting from each type of abortion.

(5) Abortion "record keeping and reporting provisions that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are permissible." *Planned Parenthood v. Danforth*, 428 U.S. 80 at 52, 79–81 (1976).

(6) Abortion and complication reporting provisions do not impose an "undue burden" on a woman's right to choose whether to terminate a pregnancy. Specifically, "[t]he collection of information with respect to actual patients is a vital element of medical research, and so it cannot be said that the requirements serve no purpose other than to make abortions more difficult." *Planned Parenthood v. Casey*, 505 U.S. 833 at 900–901 (1992).

(7) To promote its interest in maternal health and life, the State of [*Insert name of State*] maintains an interest in:

a. Collecting certain demographic information on all abortions performed, completed, or treated in the State;

b. Collecting information on all complications from all abortions performed, completed, or treated in the State; and

c. Compiling statistical reports based on abortion complication information collected pursuant to this Act for future scientific studies and public health research, and to assist women in the State to make informed decisions.

(b) Based on the findings in subsection (a), it is the purpose of this Act to promote the health and safety of women, by adding to the sum of medical and public health knowledge through the compilation of relevant data on all abortions performed or treated in the State, as well as on all medical complications and maternal deaths resulting from these abortions.

## Section 3. Definitions.

As used in this Act only:

(a) "**Abortion**" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those

means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

(1) Save the life or preserve the health of the unborn child;

(2) Remove a dead unborn child caused by spontaneous abortion; or

(3) Remove an ectopic pregnancy.

(b) **"Abortion Complication"** means only the following physical or psychological conditions which, in the reasonable medical judgment of a licensed healthcare professional, arise as a primary or secondary result of an induced abortion: uterine perforation, cervical laceration, infection, bleeding, vaginal bleeding that qualifies as a Grade 2 or higher adverse event according to the Common Terminology Criteria for Adverse Events (CTCAE), pulmonary embolism, deep vein thrombosis, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, shock, amniotic fluid embolism, coma, free fluid in the abdomen, allergic reactions to anesthesia and abortion-inducing–drugs, psychological complications as diagnosed that are listed in the current Diagnostic and Statistical Manual (DSM) and any related complication arising under the following ICD 10 codes: O04.2, O04.5, O04.6, O04.7, O04.80, O04.81, O04.82, O04.84, O04.86, O04.87, O04.88, O07.0, O07.1, O07.2, O07.34, O07.38, P04.88.

(c) "**Department**" means the Department of [*Insert name of appropriate department or agency*] of the State of [*Insert name of State*].

(d) "**Facility**" means any public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician's office, infirmary, dispensary, pharmacy, ambulatory surgical center, or other licensed institution or location wherein medical care is provided to any person.

(e) "**Hospital**" means any institution licensed as a hospital pursuant to the laws of this State.

(f) "**Physician**" means any person licensed to practice medicine in this State. The term includes medical doctors and doctors of osteopathy.

(g) "**Pregnant**" or "**pregnancy**" means that female reproductive condition of having an unborn child in the [*woman's*] uterus.

Section 4. Demographic Reporting on Abortion.

(a) For the purpose of promoting maternal health and adding to the sum of medical and public health knowledge through the compilation of relevant data, a report of each abortion performed shall be made to the Department on forms prescribed by it. The reports shall be completed by the hospital or other facility in which the abortion occurred, or the abortion-inducing drug was prescribed and/or administered, signed by the physician who performed the abortion, and transmitted to the Department within fifteen (15) days after each reporting month.

(b) Each report shall include, at minimum, the following information:

(1) Identification of the physician who performed the abortion, the facility where the abortion was performed, and the referring physician, agency, or service, if any;

a. A notation indicating whether the performing physician referred the woman to a licensed professional for pre-abortion or post-abortion counseling services.

(2) The county and state in which the woman resides;

(3) The woman's age and race;

(4) The number of the woman's previous pregnancies, number of live births, and number of previous abortions;

(5) The probable gestational age of the unborn child;

(6) The type of procedure performed or prescribed, and the serial or lot number and expiration date for each abortion-inducing drug prescribed or administered;

a. If a chemical abortion, whether the chemical abortion was completed at the providing facility or at an alternate location.

(7) The date of the abortion; and

(8) Preexisting medical condition(s) of the woman which would complicate her pregnancy, if any.

(c) Reports required under this subsection shall not contain:

(1) The name of the woman;

(2) Common identifiers such as her social security number or [*motor vehicle operator's license number*]; or

(3) Other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained or seeks to obtain an abortion.

(d) Every hospital or other facility in which an abortion is performed or completed within this State during any quarter year shall file with the Department a report showing the total number of abortions performed within the hospital or other facility during that quarter year. This report shall also show the total abortions performed in each trimester of pregnancy. These reports shall be submitted on a form prescribed by the Department that will enable a hospital or other facility to indicate whether it is receiving any state-appropriated funds. The reports shall be available for public inspection and copying only if the hospital or other facility receives state-appropriated funds within the twelve (12) calendar-month period immediately preceding the filing of the report. If the hospital or other facility indicates on the form that it is not receiving state-appropriated funds, the Department shall regard that hospital or other facility's report as confidential unless it receives other evidence that causes it to conclude that the hospital or facility receives state-appropriated funds.

(e) The Department shall prepare a comprehensive annual statistical report for the [*Legislature*] based upon the data gathered from reports under this subsection. The statistical report shall not lead to the disclosure of the identity of any physician or person filing a report under this subsection nor of any woman who is the subject of the report. The aggregated data shall also be made independently available to the public by the Department in a downloadable format by July 1 each year.

(f) The Department shall summarize aggregate data from the reports required under this Act and submit the data to the U.S. Centers for Disease Control and Prevention (CDC) for the purpose of inclusion in the annual Vital Statistics Report. The aggregated data shall also be made independently available to the public by the Department in a downloadable format. [Follow existing state laws and regulations related to vital statistics and public health data reporting]

(g) Absent a valid court order or judicial subpoena, neither the Department, any other state department, agency, or office nor any employees thereof shall compare data concerning abortions or abortion complications maintained in an electronic or other information system file with data in any other electronic or other information system,

the comparison of which could result in identifying, in any manner or under any circumstances, a woman obtaining or seeking to obtain an abortion.

(h) Statistical information that may reveal the identity of a woman obtaining or seeking to obtain an abortion shall not be maintained by the Department, any other state department, agency, office, or any employee or contractor thereof.

(i) The Department or an employee or contractor of the Department shall not disclose to a person or entity outside the Department the reports or the contents of the reports required under this subsection, in a manner or fashion to permit the person or entity to whom the report is disclosed to identify, in any way or under any circumstances, the woman who is the subject of the report.

(j) Original copies of all reports filed under this subsection shall be available to the [*State Medical Board*] for use in the performance of its official duties.

(k) The Department shall communicate the reporting requirements in this subsection to all medical professional organizations, licensed physicians, hospitals, emergency rooms, abortion facilities [*or other appropriate term such as "reproductive health center"*], Department [*of Health*] clinics, ambulatory surgical facilities, and other healthcare facilities operating in the State.

Section 5. Abortion Complication Reporting.

(a) A hospital, healthcare facility, or individual physician shall file a written report with the Department regarding each woman who comes under the hospital, healthcare facility, or physician's care and reports any complication, requires medical treatment, or suffers death that the attending physician, hospital staff, or facility staff has reason to believe is a primary or secondary result of an abortion. The reports shall be completed by the hospital, healthcare facility, or attending physician who treated the woman, signed by the attending physician, and transmitted to the Department within thirty (30) days of the discharge or death of the woman treated for the complication.

(b) Each report of a complication, medical treatment, or death following abortion required under this subsection shall contain, at minimum, the following information:

(1) The date the woman presented for treatment;

(2) The age and race of the woman;

(3) The woman's state and county of residence;

(4) The number of previous pregnancies, number of live births, and number of previous abortions of the woman;

(5) The date the abortion was performed, and type of abortion;

(6) Identification of the physician who performed the abortion, the facility where the abortion was performed, and the referring physician, agency, or service, if any;

(8) The specific complication(s) that led to the treatment, including the following physical or psychological conditions which, in the reasonable medical judgment of a licensed healthcare professional, arise as a primary or secondary result of an induced abortion: uterine perforation, cervical laceration, infection, bleeding, vaginal bleeding that qualifies as a Grade 2 or higher adverse event according to the Common Terminology Criteria for Adverse Events (CTCAE), pulmonary embolism, deep vein thrombosis, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, shock, amniotic fluid embolism, coma, free fluid in the abdomen, allergic reactions to anesthesia and abortion-inducing–drugs, psychological complications as diagnosed that are listed in the current Diagnostic and Statistical Manual (DSM) and any related complication arising under the following ICD 10 codes: O04.2, O04.5, O04.6, O04.7, O04.80, O04.81, O04.82, O04.84, O04.86, O04.87, O04.88, O07.0, O07.1, O07.2, O07.34, O07.38, P04.88;

(9) Whether the patient obtained abortion-inducing drugs via mail order or Internet website, and, if so, information identifying the name of the source, URL address, or telemedicine provider.

(c) Reports required under this subsection shall not contain:

(1) The name of the woman;

(2) Common identifiers such as her social security number or [*motor vehicle operator's license number*]; or

(3) Other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained an abortion and subsequently suffered an abortion-related complication.

(d) The Department shall prepare a comprehensive annual statistical report for the [*Legislature*] based upon the data gathered from reports under this subsection. The statistical report shall not lead to the disclosure of the identity of any physician or person filing a report under this subsection nor of a woman about whom a report is filed. The aggregated data shall also be made independently available to the public by the Department in a downloadable format.

(e) The Department shall summarize aggregate data from the reports required under this Act and submit the data to the U.S. Centers for Disease Control and Prevention (CDC) for the purpose of inclusion in the annual Vital Statistics Report. The aggregated data shall also be made independently available to the public by the Department in a downloadable format.

(f) Reports filed pursuant this subsection shall not be deemed public records and shall remain confidential, except that disclosure may be made to law enforcement officials upon an order of a court after application showing good cause. The court may condition disclosure of the information upon any appropriate safeguards it may impose.

(g) Absent a valid court order or judicial subpoena, neither the Department, any other state department, agency, or office, nor any employees or contractors thereof shall compare data concerning abortions or abortion complications maintained in an electronic or other information system file with data in any other electronic or other information system, a comparison of which could result in identifying, in any manner or under any circumstances, a woman obtaining or seeking to obtain an abortion, unless the abortion is on a minor girl who the physician or healthcare professional has cause to believe has been abused.

If a physician or healthcare professional has cause to believe that a child has been abused, sexually abused, or has been the victim of a sexual crime as defined in [*Insert appropriate reference(s) to state criminal code or other statutory provision(s)*] [*and this Act*], the mandatory reporter shall make a [*written*] report no later than the forty-eighth (48th) hour after such abuse, sexual abuse, or crime has been brought to his or her attention or after he or she suspects such abuse, sexual abuse, or crime. A mandatory reporter may not delegate the responsibility to report such abuse, sexual abuse, or crime to any other person, but must personally make the report. The mandatory reporter must make a report to [*Insert name of designated local or state law enforcement agency and/or other state or local agency responsible for investigating suspected or alleged abuse or crimes against children*].

[**Drafter's Note:** *Depending on the specific provisions and prohibitions of the state's criminal/penal code or other statutes, a more definitive exclusion of sexual acts or conduct between two (consenting) children may be appropriate in light of recent federal court decisions. Please consult AUL for specific drafting assistance.*]

(h) Statistical information that may reveal the identity of a woman obtaining or seeking to obtain an abortion shall not be maintained by the Department, any other state department, agency, office, or any employee or contractor thereof.

(i) The Department or an employee or contractor of the Department shall not disclose to a person or entity outside the Department the reports or the contents of the reports required under this subsection in a manner or fashion to permit the person or entity to whom the report is disclosed to identify, in any way or under any circumstances, the person filing the complication report or the woman who is the subject of the report.

(j) Original copies of all reports filed under this subsection shall be available to the [*State Medical Board*] for use in the performance of its official duties.

(k) The Department shall communicate this reporting requirement to all medical professional organizations, licensed physicians, hospitals, emergency rooms, abortion facilities [*or other appropriate term such as "reproductive health center"*], Department [*of Health*] clinics, ambulatory surgical facilities, and other healthcare facilities operating in the State.

## Section 6. Reporting Forms.

The Department shall create the forms required by this Act within sixty (60) days after the effective date of this Act. No provision of this Act requiring the reporting of information on forms published by the Department shall be applicable until ten (10) days after the requisite forms are first created or until the effective date of this Act, whichever is later. The Department shall update forms as needed to reflect changes to diagnostic and reimbursement coding classifications.

## Section 7. Criminal Penalties and Professional Sanctions.

(a) Any person who willfully delivers or discloses to the Department any report, record, or information required pursuant to this Act and known by him or her to be false is guilty of a [*Insert appropriate offense/penalty classification*].

(b) Any person who willfully discloses any information obtained from reports filed pursuant to this Act, other than the disclosure authorized by the Act or otherwise authorized by law, is guilty of a [*Insert appropriate offense/penalty classification*].

(c) Any person required under this Act to file a report, keep any records, or supply any information who willfully fails to file such report, keep such records, or supply

such information at the time or times required by law or regulation, is guilty of unprofessional conduct, and his or her professional license shall be subject to suspension or revocation in accordance with procedures provided under the [*Insert reference(s) to the state Medical Practice Act or other appropriate statute(s) or administrative rule(s) or procedure(s, including the State's Medical Licensure Board)*].

(d) In addition to the above penalties, any facility that willfully violates any of the requirements of this Act shall upon conviction:

(1) Have its license suspended for a period of six (6) months for the first violation.

(2) Have its license suspended for a period of one (1) year for the second violation.

(3) Have its license revoked upon a third or subsequent violation.

## Section 8. Construction.

(a) Nothing in this Act shall be construed as creating or recognizing a right to abortion.

(b) It is not the intention of this Act to make lawful an abortion that is currently unlawful.

## Section 9. Right of Intervention.

(a) The [*Legislature*], by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

(b) The [state] Attorney General may bring an action to enforce compliance with this Act or intervene as a matter of right in any case in which the constitutionality of this Act is challenged.

## Section 10. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

Section 11. Effective Date.

This Act takes effect on [*Insert date*].

For further information regarding this or other AUL policy guides, please contact:

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